IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9120 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATHUJI RUPAJI GEHLOT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9120 of 1995

MR GM AMIN for Petitioner No. 1

MR BY MANKAD, AGP for Respondents No. 1-2,5-6

MR MC BAROT for Respondent No. 3

MR PARESH UPADHYAY for Respondent No. 4

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 12/02/2002

ORAL JUDGEMENT

1. Nathuji Rupaji Gehlot, petitioner has filed this petition with a prayer to issue an appropriate writ,

order or direction quashing and setting aside the impugned order dated 20th September, 1995, at Annexure `G' passed by the respondent authority and further prayed that the respondents be directed to pay pension to the petition as per the revised pay scale i.e. Rs.260-430 and also pay arrears to him on that basis and also take appropriate action against the respondent authority for not fixing the pension of the petitioner inspite of clear direction to that effect. The petitioner further prayed that the respondent authority be restrained from recovering difference of salary from the petitioner.

2. The facts giving rise to this petition are as under:-

2.1 Nathuji Rupaji Gehlot - petitioner was appointed as a Tubewell Operator on 1.12.1996 with the State of Gujarat - respondent no.1 herein. Since then petitioner has served at various places in the State of Gujarat.

2.2 It has been stated that after formation of the Gujarat Water Resources Development Corporation respondent No.4 herein, a resolution was passed by the State Government on 6.8.78 whereby all employees working in different panchayats were ordered to be en bloc transferred to the Gujarat Water Resources Development Corporation (hereinafter referred to as `the Corporation"). The petitioner and others were en bloc transferred to the Corporation on 16.8.78 and since then the petitioner is working in the Corporation.

2.3 It has been stated that thereafter petitioner opted for the State of Gujarat and filled up the option form and it was submitted at the Sub Division Office in Deesa. The petitioner had given option in favour of State of Gujarat and his option was forwarded to the State of Gujarat and the same was accepted by the State of Gujarat.

2.4 The Executive Engineer of the Gujarat Water Resources Department issued an order dated 11.7.90 compulsory retired the petitioner as there is no post in the Government department.

2.5 Thereafter it appears that respondent No.4 Corporation has also relieved the petitioner from service on 17.7.90 though petitioner was relieved from service the petitioner was not paid any pension or pensionary benefits. The petitioner thereafter made a representation to the Executive Engineer of the respondent No.4. Inspite of the representation of the

petitioner, the respondent Corporation did not decide the representation of the petitioner for pension and for pensionary benefits.

2.6 Being aggrieved and dissatisfied with the said action the petitioner filed Special Civil Application No.10702 of 1993 before this Court.

2.7 When the matter was placed for hearing before this Court on 27th June, 1994 (Coram: S.M.Soni, J) pleased to pass following order:

"The learned advocate Mr.Trivedi for the respondent no.3 has stated before the Court that whatever is required to be paid, on their part has already been paid by them. Mr.Patel learned A.G.P. appearing on behalf of the respondents no.1 and 4 states before this Court that the petitioner is claiming for higher salary and therefore unless what the petitioner is entitled to is determined, pension cannot be fixed and therefore they are not able to fix pension and pay the same. In view of the controversy I am of the opinion that whatever the pay according to the respondent no.1 the petitioner is entitled to at the relevant time should be fixed and fix the pension on the said basis.

In view of this fact, the respondent no.4 is directed to fix the pension of the petitioner to which the petitioner is entitled to according to their calculation within 8 weeks from today."

The Court disposed of the petition accordingly.

2.8 Thereafter the Executive Engineer passed an order dated 22.8.94 stating that the pay scale of the petitioner is decided as per the original pay scale of Rs.210-270 and therefore his pay scale is fixed at Rs.270/- and on that basis the increment has been granted by the respondents on the original pay scale i.e. Rs.210-270. It was also stated that in view of this pay scale Rs.210-270 the excess amount which has been paid to the petitioner is liable to be recovered from him.

2.9 In the petition it has been stated that petitioner was appointed as a Tubewell Operator since 1966 and he has put in more than 28 years of service in the department and as he had not been paid the amount by way of pension, he approached the aforesaid petition which has been set out earlier in this behalf. This

Court specifically directed the Corporation to fix the pension of the petitioner as per the rules.

2.10 It has been submitted by the petitioner that earlier resolution passed by the Government of Gujarat, Panchayat, Housing and Urban Development Department dated 3.3.1976, as per the said resolution, the Government has decided to revise the pay scale of Tubewell Operators from Rs.110-140 to Rs.260-430. The copy of the said resolution is annexed to the petition.

2.11 It has been stated that on the basis of the said resolution, the Government issued a Circular regarding pay scale of Tubewell Operators as well as Oilmen and as per that Circular the petitioner is entitled to pay scale of Rs.260-430 which is clearly mentioned in the said circular. As per that circular, the Government has granted pay scale of Rs.260-430 with effect from 1.1.1973 and accordingly the respondents have given salary as per the revised pay scale of Rs.260-430. It has been further stated that some of the operators had approached this Court for the benefit of revised pay scale of Rs.260-430 as per circular issued by the Government. It appears that the matter reached before this Court (Coram: R.C.Mankad, J. (as he was then)) in his order dated 31.1.89 has also relied upon the earlier order passed by Justice S.B.Majmudar in SCA No.4135 and 5182 of 1984 whereby the learned Single Judge by his order dated 9.8.85 directed the Panchayat and the Corporation to extend the benefit of revised pay scale of Rs.260-430 to the petitioners of those Special Civil Applications as per the Government Resolution dated June 10, 1981 with effect from January 1, 1973 subject to the terms and conditions mentioned therein and to work and pay all the consequential benefits. The learned Judge in the final order went himself and observed as follows:

> "I hope and trust that the respondents shall make available similar benefits of revised time scale of Rs.260-430 from 1.1.1973 as per Resolution No.1 to all other remaining oilmen working under respondent No.1 up to 15.6.1979 and were transferred to respondent No.2 from 16.6.78 and who are now working as operators and who are similarly situated like the petitioners and others who had come to this court earlier."

2.11(A) As per the said order, the respondent-Corporation has given benefit of revised pay scale of Rs.260-430 to all the Oilmen and therefore as per the Resolution and the Circular of the Government as well as the order of

this Court, the Government has given benefit of revised pay scale of Rs.260-430 to the petitioner till he was relieved from service. The petitioner has also produced the said order dated 31.1.89 passed by this Court in SCA No.2435 of 1986 and others and in operative order para 5 the Court has allowed the petition and made rule absolute. The Court specifically directed the Panchayat and the Corporation to extend the benefit of revised pay scale of Rs.260-430 to all the petitioners as per Government Resolution dated June 10, 1981 with effect from January 1, 1973 subject to the terms and conditions mentioned therein. The Court specifically directed the Panchayat and the Corporation to work out all consequential benefits available to the petitioners including increments etc. in the revised pay scale, further revision of the pay scale on the basis of the said revised pay scale, increment etc. The Court further directed to pay up all the arrears of these benefits to the petitioners within four months from the date of the receipt of writ of this Court. The Court specifically further directed the State Government to make sufficient funds available to the Corporation to make payment to the petitioners as aforesaid.

2.12 It has been stated in the petition that after long period of time and without giving an opportunity of hearing to the petitioner, respondent No.2 - Executive Engineer has passed an order on 22.8.94 to the effect that respondent No.2 has decided that the pay scale of the petitioner should be Rs.270/- as per the original pay scale of Rs.210-270.

2.13 Being aggrieved and dissatisfied with the aforesaid action of the respondent, the petitioner filed Special Civil Application No.10962 of 1994 before this Court.

2.14 When the matter was placed for hearing before this Court, this Court (Coram: C.K.Thakkar, J. (as he was then) on 4.7.95 has allowed the petition on the ground that the order is passed in violation of principles of natural justice. The Court also directed the authority to decide the question of the petitioner and pass appropriate order in accordance with law after affording opportunity of being heard to the petitioner. As the petitioner has approached twice to this Court the Court also directed the respondents to dispose of the matter as expeditiously as possible preferably before September 30, 1995.

2.15 It has been stated that pursuant to the said

order the hearing had taken place on 20.9.95 wherein the present petitioner appeared and after hearing the petitioner, the respondents have passed the order dated 20.9.95 wherein the respondents have not decided the case of the petitioner before it as per the direction of this Court with regard to pension of the petitioner. However, instead of deciding the case of the petitioner, they have passed the order dated 20.9.95 with regard to recovery and that they are not responsible persons for deciding the said question. However, it is surprising that the respondents who were directed by this Court to decide the case of the petitioner instead of that they have evaded and abdicated their responsibility and kept the question open and undecided and they have decided in the said order with regard to recovery that the Administrative Manager of the Corporation will decide the question of recovery from the petitioner, after making proposal to the said officer if the said proposal will be decided in favour of the petitioner, then they will not make any recovery. If the said officer will not decide it in favour of the petitioner with regard to recovery, then they will withhold the benefits with regard to pension and will take action under the revenue proceedings.

2.16 Being aggrieved and dissatisfied with the aforesaid action of the authority, the petitioner filed present petition before this Court on 10th October, 1995.

3. When the matter was placed for hearing before this Court, this Court has issued notice on 20.10.1995 and thereafter matter has been admitted on 29th February, 1996, and Court has made rule returnable accordingly.

4. When the matter was placed for hearing before this Court, the respondents have not filed affidavit-in-reply in this behalf. I have already set out the order of Justice S.M.Soni as well as order of Justice R.C.Mankad in this behalf.

5. Mr.Amin, learned advocate for the petitioner stated that, inspite of the orders of this Court (Coram: S.B.Majmudar, J. (as he was then), S.M.Soni, J. R.C.Mankad, J (as they were then) and C.K.Thakkar, J. (as he was then) still the petitioner has not been able to get any pension or pensionary benefits in this behalf. In view of the same the order passed by the authorities are illegal, unjust and are liable to be quashed and set aside in this behalf.

CONCLUSION:
5.A I have considered the facts and the contentions

raised by the learned advocate for the petitioner particularly order dated 27th June, 1994, passed by S.M.Soni, J. and the order dated 31.1.89 passed by this Court R.C.Mankad, J in SCA No.129/84 and another order dated 9.8.85 passsed by S.B.Majmudar, J. in SCA No.4135 and 5182 of 1984 and others and also order of Justice C.K.Thakkar, J (as he was then) dated 4th July, 1995, in this behalf.

6. It is no doubt true that the Government passed an order on 1st January, 1973, giving revised pay scale Rs.260-430, however, subsequent order of Executive Engineer has decided to reduce the said pay scale to Rs.210-270. In my view therefore the order passed by respondent No.2 dated 22nd August, 1994, is contrary to and inconsistent with the order of this Court and therefore same should be liable to be quashed and set aside. In my view the order passed by the respondent dated 20th September, 1995, is also contrary to and inconsistent with the order of this Court in Special Civil Application No.4135 and 5182 of 1984 decided on 9th August, 1985 by Justice S.B.Majmudar (as he was then) as well as order passed by Justice R.C.Mankad dated 31st January, 1989, in Special Civil Application No.129 of 1984 and others. The impugned order dated 20th September, 1995, is also contrary to law and against the Government Resolution dated 3.3.1976. The Government Respondents instead of complying the order and directions of this Court, the respondents have kept such question open with regard to pension and they have proceeded on different footing and due to that the petitioner had to again approached this Court third time by filing this petition. Therefore the order dated 20th September, 1995, at Annexure `G' to the petition is bad in law, illegal and liable to be quashed and set aside. The impugned order passed by the respondents shows clearly malafide intention on the part of the respondents with a view to harass the petitioner in this behalf.

7. I have considered the facts and circumstances of the case. The State Government and the Corporation are directed to extend the benefit of revised pay scale of Rs.260-430 to the petitioner as per Government Resolution dated June 10, 1981 with effect from January 1, 1973 subject to the terms and conditions mentioned therein. The Corporation and the Government are directed to work out all consequential benefits available to the petitioner including increments etc. in the revised pay scale, further revision of the pay scale on the basis of the said revised pay scale, increment etc. in the further revised pay scale in accordance with the Rules

and to pay up all the arrears of these benefits to the petitioner within four months from the date of the receipt of writ of this Court. These directions were already given by Justice R.C.Mankad in Special Civil Application No.129 of 1984 and others.

8. The pay scale of the petitioner to be revised as per the resolution and the circular issued by the Government and the petitioner should be given the pay scale of Rs.260-430. The said revision of the pay scale will be given retrospective effect from 1.1.1973. The order of the authority dated 20th September, 1995, is absolutely contrary to the provisions of Articles 14 and 16 of the Constitution and against the Resolutions, Circulars of the Government as well as judgment of this Court and therefore same should be liable to quashed and set aside. The respondents are directed to immediately grant the pension to the petitioner as per the revised pay scale of Rs.260-430 which is now revised from 1.1.1973 and also 1.1.73 from 17.7.1990 and further directed not to recover difference of salary from the petitioner which is contrary to law.

9. In view of the same the petition is allowed. This Court issue a writ of certiorari for quashing and setting aside the order dated 20th September, 1995, passed by the respondent authority. I further direct the respondents to pay pension to the petitioner as per the revised pay scale i.e. Rs.260-430 and also pay arrears to him on that basis and also take appropriate action.

10. Learned advocate for the petitioner stated that the petitioner has been unnecessary harassed by the respondent with malafide intention. In view of the same, the respondents are directed to give revised pay scale as subsequently revised by the Government in this behalf. As I indicated hereinabove, the respondents have passed the order contrary to the order of this Court and also without hearing the petitioner and thereafter when this Court directed them to hear the petitioner but did not decide the same issue in accordance with law, I direct the respondent authority to give pension to the petitioner in this behalf when this Court (Coram: S.M.Soni, J.) has already passed the order on 27th June, 1994, in Special Civil Application No.10702 of 1993 directing the respondent authority to fix the pension of the petitioner from that date.

11. Learned advocate for the petitioner has also relied upon the judgment of this Court in the case of LALJIBHAI GARBADDAS THAKKAR VS. STATE OF GUJARAT

reported in 2000(4) GLR 3474 decided by this Court Coram: M.S.Shah, J.)

12. In view of the aforesaid judgment, I direct the respondents authority to release the pension as per the revised pay scale and also pay arrears of pension to the petitioner within two months from the date of order of this Court. I further direct the respondent to pay interest on all these amounts from 1st October, 1995 i.e. date of the filing of the petition. If, however, the respondent does not release the arrears of pension plus interest thereon within two months as aforesaid, the respondent shall be liable to pay interest at the rate of 12% p.a., on the arrears of pension plus interest with effect from the date of order of this Court till the date of payment of arrears and such interest may be recovered from the officer/employee who may be found responsible for the delay. The Government should constitute an inquiry to find out why the petitioner has not been given the benefits of the difference of pay scale as well as arrears of pension plus interest and who are the concerned employees on whose default the petitioner did not receive the said benefits in this behalf. If the Government constitute an inquiry and if found such officer/employee on whose default the petitioner could not be able to get the fixation of his pay scale as well as pension then the authority can also recovered the same personally from the said officer who is liable in this behalf.

13. Looking to the facts and circumstances of the case, in my view the petitioner is also entitled to Rs.2500/- as exemplary cost which to be paid by the Government. As indicated earlier, if the officer found guilty then this exemplary cost may also be recovered from the said officer in this behalf.

14. Rule is made absolute in terms of aforesaid directions with no order as to costs.

(K.M. Mehta, J.)

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